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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

BENJAMIN SHORTRIDGE,

Defendant and Appellant.

B292498

(Los Angeles County
Super. Ct. No. NA108004)

APPEAL from a judgment of the Superior Court of
Los Angeles County, Richard M. Goul, Judge. Affirmed.

Christopher Muller, under appointment by the Court of
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

On February 20, 2016 Benjamin Shortridge and two companions entered a supermarket in Long Beach, placed bottles of liquor and cases of beer into two shopping carts and left the store without paying for them. A criminal complaint relating to the incident was not filed until December 6, 2017; a warrant for Shortridge's arrest was issued the same day. Shortridge was subsequently charged in a first amended information filed September 5, 2018 with one count of second degree burglary (Pen. Code, § 459) and one count of grand theft (Pen. Code, § 487, subd. (a)). The information specially alleged that Shortridge had suffered one prior serious or violent felony conviction within the meaning of the three strikes law (Pen. Code, §§ 667, subds. (b)-(j), 1170.12) and had served three separate prison terms for felonies (Pen. Code, § 667.5, subd. (b)).

On March 18, 2016, several weeks after the Long Beach incident, Shortridge was sentenced in Orange County Superior Court case number 16WF0505 to three years of formal probation on condition he serve 270 days in county jail for having committed a second degree burglary in Seal Beach.

Before trial in the Long Beach case, Shortridge moved to dismiss the amended information, arguing the prosecution was aware he had committed the crimes shortly after February 20, 2016, but had unreasonably delayed filing the charges against him in violation of his due process rights. Shortridge maintained he was prejudiced by the delay because he was prevented from possibly serving concurrent sentences in the Long Beach and Orange County cases. The prosecutor argued Shortridge's sole remedy was an additional 270 days of presentence custody credit if convicted in the Long Beach case, rather than dismissal of the

charges. The trial court agreed with the prosecutor and denied the motion.

Outside the jury's presence and before any witnesses testified, the trial judge told the parties he recognized a prosecution witness, the supermarket manager. The judge explained, as a customer of the supermarket, he "may have spoken to [the manager] once or twice, asking where something was, but that's the extent of my interactions with her." In response to defense counsel's question, the judge stated he could be fair. Neither counsel objected or requested that the judge recuse himself.

The supermarket manager testified at trial, and four video surveillance recordings were played for the jury. When asked whether she had identified the brands, quantity and value of the stolen liquor, the manager stated she had made a list of the liquor bottles taken and their retail costs and gave it to the police immediately following the crime. The list was introduced as an exhibit and shown to the jury during the manager's testimony. The manager testified the retail value of the stolen liquor was in excess of \$2,225.

The jury convicted Shortridge of both charges. In a bifurcated proceeding Shortridge admitted the special prior crimes allegations.

After denying Shortridge's motion to dismiss his prior strike conviction (Pen. Code, § 1385; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497, 508), the trial court sentenced Shortridge to a six-year state prison term, the upper term of three years for burglary, doubled under the three strikes law. The court stayed the sentence for grand theft under Penal Code section 654 and dismissed the three prior prison term

enhancements (Pen. Code, § 1385). The court awarded Shortridge 580 days of presentence custody credits, including 270 actual days and 270 days of conduct credits pursuant to its ruling on the motion to dismiss.

Shortridge filed a timely notice of appeal.

DISCUSSION

We appointed counsel to represent Shortridge on appeal. After examination of the record, counsel filed an opening brief in which no issues were raised. On January 14, 2019 we advised Shortridge he had 30 days in which to personally submit any contentions or issues he wished us to consider. On February 19, 2019 we received a 12-page supplemental brief that presented four issues. First, Shortridge argues the trial court abused its discretion in denying his motion to dismiss on the ground the prosecution had unreasonably delayed in filing charges against him. Second, he argues the trial court had a conflict of interest with respect to a prosecution witness, the supermarket manager. Third, Shortridge contends there was insufficient evidence the value of the stolen liquor exceeded \$950 as required for the offense to be grand theft. Finally, he argues his defense counsel provided constitutionally ineffective assistance by confusing the jury, feigning incompetence and collaborating with the trial court and the prosecutor.

Shortridge's claims lack merit. As to his first argument, he has not carried his burden to show actual prejudice on account of the delay. (See *Serna v. Superior Court* (1985) 40 Cal.3d 239, 249.) Although Shortridge might have received concurrent sentences in the Long Beach and Orange County cases, the award of 580 days of presentence custody credit provided the identical benefit as concurrent sentences.

The gist of Shortridge's conflict of interest claim is that the trial judge engineered the assignment of this case to his court and intentionally delayed advising counsel that he recognized the supermarket manager to ensure Shortridge would receive a maximum sentence. The trial judge's decision not to recuse himself is not reviewable on appeal; it may be reviewed only by a writ of mandate from this court. (Code Civ. Proc., § 170.3, subd. (d); *People v. Brown* (1993) 6 Cal.4th 322, 335.) Shortridge's failure to pursue writ relief bars any consideration of the claim. In any event, nothing in the record supports Shortridge's contention the trial judge somehow maneuvered to have the case assigned to his court or otherwise failed to follow all appropriate procedures in trying the case.¹ Shortridge's due process rights were not violated.

As for Shortridge's claim the evidence was insufficient to prove he had committed grand theft, as opposed to a misdemeanor theft offense, the supermarket manager's uncontroverted testimony fully supports the jury's finding that the value of the stolen liquor exceeded \$950. (See *People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

Finally, the record fails to support any of Shortridge's claims that his defense counsel provided ineffective assistance.

We have examined the record and are satisfied Shortridge's appellate counsel has fully complied with the responsibilities of counsel and no arguable issue exists. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v.*

¹ Shortridge could have been sentenced to a state prison term of nine years. The six-year term actually imposed was not the maximum potential sentence.

Kelly (2006) 40 Cal.4th 106, 118-119; *People v. Wende* (1979)
25 Cal.3d 436, 441-442.)

DISPOSITION

The judgment is affirmed.

PERLUSS, P. J.

We concur:

SEGAL, J.

FEUER, J.